Supreme Court, U.S.
FILED
NOV 7 ~ 2008
OFFICE OF THE CLERK

No. 08-326

IN THE

Supreme Court of the United States

JEFFREY BEARD,
Petitioner,

v.

FRANCIS HANNON,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

MATTHEW J. MATULE
Counsel of Record
DAVID S. CLANCY
CHRISTOPHER G. CLARK
One Beacon Street
31st Floor
Boston, Massachusetts 02108
(617) 573-4800

Counsel for Respondent
Francis Hannon

QUESTION PRESENTED

Whether a state corrections official is subject to personal jurisdiction in a foreign state when he personally directed the transfer of an inmate to the foreign state's corrections system, and the inmate's claim arises out of and directly relates to the alleged retaliatory nature of the transfer itself?

PARTIES TO THE PROCEEDING

Petitioner is Jeffrey Beard, Secretary of the Pennsylvania Department of Corrections. Respondent is Francis Hannon, a Pennsylvania inmate who was transferred from the Pennsylvania Department of Corrections to the Massachusetts Department of Correction pursuant to the Interstate Corrections Compact allegedly in retaliation for engaging in constitutionally-protected legal activities.[1]

---

[1] MaryJane Hesse, who is represented by counsel for the Petitioner, was a party in the proceedings in the Court of Appeals but has no direct interest in the outcome of the petition for a writ of certiorari. Respondent did not appeal the decision of the Court of Appeals with respect to Ms. Hesse.

The following parties were listed on the docket in the Court of Appeals but did not participate in the proceedings in that court: Raymond Cook, Sean Milliken, Wayne D. Crosby, Lawrence M. McArthur, Kevin King, Henry LaPlante, William Whyte, Christopher DeMarco, Angel Pimental, Joseph Lodico, Steven Balsavich, Edward Keith, Michael T. Maloney, Peter Allen, Kristie LaDouceur, Kenneth Deorsey, Paul Duford, Jeffrey Grimes, Richard Medeiros, Gilbert Lemon, II, John Does 1-50, Clark Color Lab, Vincent Mooney, Massachusetts Department of Correction, Frederick Callendar, Richard McArthur, James V. Sullivan, Gary Fyfe, Robert Kolber, and Herbert Berger-Hershkowitz. Respondent believes that these parties have no direct interest in the outcome of the petition for writ of certiorari.

TABLE OF CONTENTS

QUESTION PRESENTED i

PARTIES TO THE PROCEEDING ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES v

STATEMENT OF THE CASE 1

REASONS TO DENY THE PETITION 9

I. THE FIRST CIRCUIT PROPERLY APPLIED ESTABLISHED SUPREME COURT PRECEDENT 10

II. THIS COURT HAS REPEATEDLY AND RECENTLY DECLINED TO REVIEW THE JURISDICTIONAL ISSUE PRESENTED IN THIS CASE 13

III. PETITIONER ACKNOWLEDGES THAT THERE IS NO DIRECT CONFLICT AMONG THE COURTS OF APPEALS 15

A. The Courts Of Appeals Consistently Apply This Court's Personal Jurisdiction Legal Standard And Only Reach Different Results Due To Case-By-Case Analysis Of Relevant Facts 15

B. There Is No Inherent Conflict Among The Courts Of Appeals On The Broader Issue Of Personal Jurisdiction Over Out-Of-State Officials 19

IV. THE JURISDICTIONAL ISSUE PRESENTED IN THIS CASE IS NOT RIPE FOR THIS COURT'S REVIEW 22

A. The First Circuit's Limited, Fact-Specific Holding Does Not Alter Existing Precedent Restricting Most Suits Against Out-Of-State Corrections Officials 22

B. The First Circuit's Narrow Holding Does Not Threaten To Disrupt Other Interstate Agreements As *Amici* Apprehend 25

CONCLUSION 27

TABLE OF AUTHORITIES

CASES — PAGE(S)

Arizona v. Evans,
514 U.S. 1 (1995) 25

Asahi Metal Industries Co. v. Superior Court,
480 U.S. 102 (1987) 8, 21

Burger King Corp. v. Rudzewicz,
471 U.S. 462 (1985) 7, 10, 19

City of Virginia Beach v. Roanoke River Basin Ass'n, 776 F.2d 484 (4th Cir. 1985) 21

Dial-Up Services, Inc. v. Oregon,
No. 07-00423-PHX-EHC, 2007 WL
4200756 (D. Ariz. Nov. 27, 2007) 20, 21

Grand River Enterprises Six Nations, Ltd. v. Pryor, 425 F.3d 158
(2d Cir. 2005), *cert. denied*,
127 S. Ct. 379 (U.S. 2006) 14, 15, 25, 26

Great Western United Corp. v. Kidwell,
577 F.2d 1256 (5th Cir. 1978) 20

Hannon v. Beard,
524 F.3d 275 (1st Cir. 2008) 2, 3, 4

Kinslow v. Pullara,
538 F.3d 687 (7th Cir. 2008) 16, 17

Konisch v. United States,
150 F.3d 112 (2d Cir. 1998) 20

Kulko v. Superior Court,
436 U.S. 84 (1978) 10, 11, 12, 19

Lee v. City of Los Angeles,
250 F.3d 668 (9th Cir. 2001) 20

Maney v. Ratcliff,
399 F. Supp. 760 (E.D. Wis. 1975) 21

McCray v. New York,
461 U.S. 961 (1983) 25

Michigan Coalition of Radioactive Material Users, Inc. v. Griepentrog,
954 F.2d 1174 (6th Cir. 1992) 20

Overby v. Johnson,
418 F. Supp. 471 (E.D. Mich. 1976) 21

Pennington Seed, Inc. v. Produce Exchange No. 299, 457
F.3d 1334 (Fed. Cir. 2006) 21

Stroman Realty, Inc. v. Antt,
528 F.3d 382 (5th Cir. 2008),
cert. denied, --- S. Ct. ---
(U.S. Oct. 20, 2008) 14

Stroman Realty, Inc. v. Wercinski,
513 F.3d 476 (5th Cir. 2008),
cert. denied, --- S. Ct. ---
(U.S. Oct. 6, 2008) 14, 20, 21, 22

Taylor v. Phelan,
912 F.2d 429 (10th Cir. 1990) 20

Trujillo v. Williams,
465 F.3d 1210 (10th Cir. 2006) 16, 17, 18

United States. v. Ferrara,
54 F.3d 825 (D.C. Cir. 1995) 20

Ziegler v. Indian River County,
64 F.3d 470 (9th Cir. 1995) 20

STATUTES

Mass. Gen. Laws ch. 125 App. § 2-1 ..... 3, 4

61 Pa. Stat. Ann. §§ 1061-63 ..... 3, 4

RULES

Fed. R. Civ. P. 54(b) 5

Sup. Ct. R. 10 13

OTHER AUTHORITIES

Tracey Kyckelhahn & Thomas H. Cohen,
Bureau of Justice Statistics,
NCJ 222989, *Civil Rights Complaints in U.S. District Courts, 1990-2006* (2008), *available at* http://www.ojp.usdoj.gov/bjs/abstract/crcusdc06.htm 23

STATEMENT OF THE CASE

This case involves the issue of whether personal jurisdiction lies over an out-of-state corrections official when that official ordered the transfer of an inmate to the forum state, allegedly in retaliation for the inmate's exercise of constitutionally-protected rights. Pet. App. 3a-5a. Specifically, this case arises out of Petitioner's personal direction to transfer a Pennsylvania inmate from a Pennsylvania correctional facility to a Massachusetts correctional facility pursuant to the Interstate Corrections Compact ("ICC"). *Id.* The U.S. Court of Appeals for the First Circuit held that a Massachusetts court could properly assert jurisdiction over Petitioner on the unique facts of this case because Respondent's claim relates specifically to the allegedly retaliatory nature of the transfer itself (unlike a claim involving general post- or pre-transfer grievances). Pet. App. 15a-16a. By issuing that fact-specific, narrowly-tailored opinion, the First Circuit reached a result that was not only correct on the law, but also one that will have a limited impact on prison administration and federal court dockets.

Petitioner Jeffrey Beard is the Secretary of the Pennsylvania Department of Corrections, a cabinet-level position that, according to Petitioner, "supervises over 14,000 employees and oversees the operation of more than two dozen state correctional institutions and other facilities housing over 45,000 prisoners." Pet. 3. Despite Beard's implication that he is far-removed from inmate-specific decisions, the First Circuit observed that "[t]hough Beard asserted that he has not been involved with Hannon

subsequent to the transfer, he did not deny involvement leading up to the transfer." Pet. App. 4a.[2]

Respondent Francis Hannon was convicted in 1978 in Pennsylvania and initially incarcerated in the Pennsylvania Department of Corrections. Pet. App. 3a. Since his incarceration, Hannon has been characterized as the "quintessential 'jailhouse lawyer'" because he has vigorously pursued his own post-conviction relief, filed numerous grievances and lawsuits challenging the conditions of his confinement in prison, assisted other inmates in filing their grievances and lawsuits, and represented thousands of inmates in disciplinary proceedings. *Id.* Hannon obtained favorable outcomes in many of those litigations and disciplinary proceedings. Br. of Plaintiff-Appellant Francis Hannon 8, *Hannon v. Beard*, 524 F.3d 275 (1st Cir. 2008) ("Respondent's Opening Brief").

Over the last 20 years, Hannon has not received a single disciplinary report for any infraction in any correctional facility in any state. *See id.* at 10 n.2. Indeed, Pennsylvania prison officials have openly acknowledged in written communications to other prison systems that Hannon is not a management problem or a threat to staff or other inmates. *Id.* at 10. Nevertheless, from 1997 to 2001, Hannon was transferred among six different correctional facilities in five different jurisdictions

---

[2] Subsequent document discovery and Beard's sworn deposition testimony has elaborated on the extensive degree of his personal, direct and unprecedented involvement in Hannon's transfer.

(Pennsylvania, Massachusetts, Virginia, Maryland and the District of Columbia). Pet. App. 4a.

On December 24, 2001, Hannon was transferred from the Pennsylvania Department of Corrections to the Massachusetts Department of Correction. Pet. App. 4a. During that interstate transfer, many of Hannon's legal materials disappeared and were never returned upon his arrival in Massachusetts. *Id.* Hannon alleges that Beard directed this transfer in retaliation for Hannon's advocacy and litigation against Beard and other prison officials. Pet. App. 4a.[3]

Hannon's transfer to the Massachusetts Department of Correction was effected pursuant to the ICC and an agreement executed in furtherance of the ICC statutes passed by the Massachusetts and Pennsylvania legislatures, the Intergovernmental Agreement For The Implementation Of The Interstate Corrections Compact (the "ICC Contract"). *See* Mass. Gen. Laws ch. 125 App., § 2-1; 61 Pa. Stat. Ann. §§ 1061-63; Reply Addendum of Plaintiff-Appellant Francis Hannon at 1-13, *Hannon v. Beard*,

---

[3] After the Massachusetts Department of Correction likewise tired of Hannon's advocacy activities, in 2007 Hannon was remitted back to the Pennsylvania Department of Corrections, which immediately effected his transfer to the department of corrections of a sixth state, this time New Jersey. Pet. App. 5a. Hoping to prevent yet another transfer, Hannon sought emergency injunctive relief from the District Court. *See id.* That petition was denied, and the decision was affirmed on expedited appeal to the First Circuit. *See id.* Hannon continues to serve his sentence in New Jersey. *See id.*

524 F.3d 275 (1st Cir. 2008).[4] The ICC statutes and the ICC Contract confer reciprocal benefits and create ongoing obligations, including the right to exchange inmates with the other Commonwealth, the obligation to pay for certain medical, psychiatric or dental expenses of the transferred inmate and the obligation to provide periodic progress reports on the inmate. *Id.*

While incarcerated in the Massachusetts Department of Correction system, Hannon and several other Massachusetts inmates timely commenced an action *pro se* in the U.S. District Court for the District of Massachusetts against Massachusetts and Pennsylvania corrections officials alleging various state and federal constitutional

---

[4] The stated purpose and policy of the ICC statutes are as follows:

> The party states, desiring by common action to fully utilize and improve their institutional facilities and provide adequate programs for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society and effecting [economies] in capital expenditures and operational costs. The purpose of this compact is to provide for the mutual development and execution of such programs of cooperation for the confinement, treatment and rehabilitation of offenders with the most economical use of human and material resources.

Mass. Gen. Laws ch. 125 App. § 2-1; 61 Pa. Stat. Ann. § 1062, at I.

violations. Pet. App. 3a. The District Court subsequently appointed undersigned counsel, which filed an amended complaint. *See id.* at 23a. In his amended complaint, Hannon asserted several state and federal claims, including a claim that Beard pursued a strategy of transferring Hannon to out-of-state corrections facilities and confiscating various legal materials in retaliation for Hannon's constitutionally-protected advocacy on behalf of himself and other inmates. *Id.* at 3a. Hannon also alleged that a Pennsylvania Department of Corrections librarian, MaryJane Hesse, improperly refused to provide certain legal research materials and thereby restricted his access to the courts. *Id.* at 4a. Hannon seeks damages and injunctive relief. Pet. 4.

In the District Court, Beard and Hesse filed a motion to dismiss on several grounds, including lack of personal jurisdiction. Pet. App. 32a-36a. Only reaching the jurisdictional analysis, the District Court granted the motions to dismiss on the grounds that the Massachusetts long-arm statute did not reach Beard or Hesse because they did not "transact business" within Massachusetts. *Id.* In reaching its conclusion, the District Court did not engage in the constitutional due process analysis for personal jurisdiction. *Id.* The District Court certified its decision as a final judgment pursuant to Fed. R. Civ. P. 54(b). Hannon timely appealed. Pet. App. 6a.

The First Circuit reversed as to Beard, but affirmed as to Hesse. Pet. App. 21a. Although the Court of Appeals had previously "construed the Massachusetts long-arm statute to be coextensive

with the limits allowed by the United States Constitution," the First Circuit reasoned that it would be useful to consider whether the Massachusetts long-arm statute reached Beard and Hesse because Hannon's claim "involves Pennsylvania state officials' exercise of their discretion." Pet. App. 7a. Focusing closely on the particular facts of this case (which, unlike other prison cases, challenges the transfer itself), the First Circuit held that "[t]he contacts that Beard would have had to make to arrange for Hannon's transfer from Pennsylvania to Massachusetts are sufficient to constitute 'transacting business' under the broadly-construed long-arm statute."[5] Pet. App. 10a.

---

[5] Indeed, the First Circuit recited in exhaustive detail the extensive contacts that the ICC transfer of Hannon created:

> Pennsylvania was required to send an application to Massachusetts requesting to transfer Hannon, arrange and pay for Hannon's transportation to a Massachusetts institution, transfer funds owed to Hannon to Massachusetts, furnish documents and provide legal advice as necessary to Massachusetts, pre-authorize and pay for Hannon's medical, psychiatric, and dental care or treatment in Massachusetts, and authorize Hannon's security classification, among other things. Massachusetts, in turn, was obligated to make regular reports to Pennsylvania on Hannon's conduct. In sum, as Hannon alleges, when Beard arranged for the transfer between the Pennsylvania DOC and the Massachusetts DOC pursuant to an existing, ongoing contract between the two, he "caused extensive services to be rendered in Massachusetts, caused payment to be made in Massachusetts, and procured the application of Massachusetts law to [ ] Hannon's future conduct."

Pet. App. 9a-10a (internal citation omitted).

The First Circuit then articulated and applied this Court's settled constitutional test for personal jurisdiction. Pet. App. 12a-21a; *see Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474-76 (1985). In each step of its jurisdictional analysis, the First Circuit emphasized the fact that Hannon's claim in this case specifically related to the allegedly-retaliatory nature of the ICC transfer itself and Beard's personal involvement in that transfer. Pet. App. 13a-21a. For the relatedness prong, the First Circuit stated that "we stress that Hannon's claim *based on the unconstitutionality of the transfer itself is critical to our analysis.*" Pet. App. 15a (emphasis added). The First Circuit further reasoned that "Beard's contacts with Massachusetts in arranging for Hannon's transfer are therefore directly related to Hannon's retaliation claim, *which is based on the transfer itself.*" Pet. App. 13a (emphasis added).

For the minimum contacts (or purposeful availment) prong, the First Circuit stated that it was "convinced that Beard's contacts with Massachusetts were not 'random, isolated or fortuitous'" and that "Beard [benefited] from subjecting Hannon to Massachusetts prisons and Massachusetts law by ridding himself of a troublemaker." Pet. App. 17a (citation omitted).[6]

For the reasonableness prong, the First Circuit employed the familiar five-factor test precisely as set

---

[6] The First Circuit went further, emphasizing that, "if it is true that Beard's transfer was made for unconstitutional reasons, Beard could not only have foreseen that Hannon would sue him but that Hannon would sue him in Massachusetts." Pet. App. 17a-18a.

forth by this Court in *Asahi Metal Industries Co. v. Superior Court*, 480 U.S. 102 (1987). In its analysis the First Circuit relied in part on the facts that his litigation had already been pending in Massachusetts for several years and that Hannon secured court-appointed legal counsel in Massachusetts. Pet. App. 18a-21a. The First Circuit also noted that Beard identified "no reason why appearing in Massachusetts would be a special burden beyond ordinary inconvenience." Pet. App. 19a. As a policy matter, the First Circuit also properly weighed "the interests of all sovereigns in promoting substantive social policies." Pet. App. 20a. Based on this extensive analysis, the First Circuit concluded that the Massachusetts court could permissibly assert personal jurisdiction over Beard. Pet. App. 21a.

Significantly, the First Circuit expressly stated:

> [W]e stress that Hannon's claim based on the unconstitutionality of the transfer itself is critical to our analysis. One of Beard's principal arguments against asserting personal jurisdiction on the basis of participation in the Compact is that it would subject Beard and his counterparts across the country to lawsuits in every state that is a party to the Compact. While we understand his concern, our decision ought not have this [e]ffect.

Pet. App. 15a. The First Circuit reached this conclusion reasoning that routine complaints concerning an inmate's conditions of confinement are excluded from the court's holding "because the alleged contacts (the transfer pursuant to the [ICC])

are not related to the alleged harm (treatment in the sending state)." *Id.* at 16a.

The First Circuit further stressed that its narrow holding was based on the "unique factual situation" presented by this case and that its holding did not provide "a free ticket for personal jurisdiction in receiving states over any prison officials who are parties to the Compact." Pet. App. 16a.[7]

Beard filed a motion for rehearing or rehearing en banc, which the First Circuit denied. Pet. App. 39a-40a. Beard filed his petition for a writ of certiorari in this Court, and thereafter a consolidated amicus brief in support of the petition for certiorari was filed by the State of Indiana on behalf of itself and 22 additional States and Commonwealths.

REASONS TO DENY THE PETITION

The question presented in the petition does not warrant review for several compelling reasons: (1) the First Circuit properly applied this Court's settled personal jurisdiction jurisprudence to the unique facts of this case, (2) this Court has repeatedly declined to review substantially similar issues, as recently as last month, (3) Beard concedes that there is no conflict among the Courts of Appeals on the narrow issue presented in the petition, (4) the

---

[7] Applying this same legal framework, the First Circuit concluded that the factual allegations against Hesse were insufficient to support jurisdiction in Massachusetts. The First Circuit reasoned that Hesse's "limited interactions" in connection with sending certain letters and legal materials to Massachusetts were "merely incidental" and therefore did not permit an assertion of jurisdiction. Pet. App. 11a.

jurisdictional issue in this case has not been the subject of varying lower court decisions and is not ripe for this Court's review and (5) the First Circuit's analysis neither expands jurisdiction beyond its existing constitutional reach nor constricts jurisdiction to unfairly advantage one class of defendants to the exception of others. Therefore, the petition should be denied.

I. THE FIRST CIRCUIT PROPERLY APPLIED ESTABLISHED SUPREME COURT PRECEDENT

The First Circuit properly applied the settled, fact-dependent personal jurisdiction analysis articulated by this Court and consistently applied for decades. *See* Pet. App. 6a-21a. Indeed, the First Circuit engaged in a detailed analysis of the Massachusetts long-arm statute and meticulously applied the constitutional due process framework, including an extensive assessment of the relatedness, purposeful availment, and reasonableness prongs. *See* Pet. App. 12a-21a. For each prong, the First Circuit emphasized the unique circumstances of this case, most importantly focusing on the fact that Hannon's particularized factual allegations against Beard related to the allegedly retaliatory nature of the transfer itself (as opposed to a claim concerning Hannon's general conditions of confinement in Massachusetts). *See Burger King*, 471 U.S. at 485-86 (recognizing that "the facts of each case must [always] be weighed" to determine whether personal jurisdiction is proper (citing *Kulko v. Superior Court*, 436 U.S. 84, 92 (1978)) (internal quotation marks omitted)).

In suggesting a conflict with this Court's prior rulings, Beard primarily contends that the First Circuit's jurisdictional assessment did not place sufficient emphasis on state sovereignty and Beard's status as a state official. Pet. 12-15. This argument fails as a matter of law because this Court has not applied a different personal jurisdiction standard to out-of-state public officials—and Beard does not contend otherwise (nor could he).

Although Beard devotes nearly five pages of his petition to attempting to paint the First Circuit's opinion as conflicting with this Court's past decisions, Beard does not cite one case in which this Court (or any court) established a modified jurisdictional framework applicable only to state officials.[8] Far from promoting harmony, imposing a different standard for out-of-state officials would itself mark a fundamental change to personal jurisdiction jurisprudence. Beard offers no support for why such a sea change is warranted.

Beard also contends that the First Circuit's decision conflicts with this Court's reasoning in *Kulko v. Superior Court*, 436 U.S. 84 (1978). In *Kulko*, this Court held that jurisdiction over an out-

---

[8] For example, Beard asserts that "[r]equiring a state official to defend against a claim in a foreign jurisdiction is a double imposition on the official's exercise of discretion." Pet. 15. Beard also contends that "[a] prisoner is, of course, entitled to bring suit against a state official for violation of constitutional rights, but the prisoner should not be entitled to do so in a jurisdiction where the official does not have, and never had, any physical presence." *Id.* The striking absence of legal support for Beard's sweeping "discretion" and "physical presence" propositions underscores the tenuous nature of his argument.

of-state individual—a divorced father, not a public official—was improper because he "did not purposefully derive benefit from any activities relating to the [forum state]." 436 U.S. at 96. This Court reasoned that the father "did no more than acquiesce in the stated preference of one of his children to live with her mother in California," and that this acquiescence can hardly be said to constitute purposeful availment of the benefits of the forum state's (*i.e.*, California's) laws. *Id.* at 94, 97. This Court further reasoned that "the mere act of sending a child to California to live with her mother is not a commercial act and connotes no intention to obtain or expectancy of receiving a corresponding benefit in the State that would make fair the assertion of that State's judicial jurisdiction." *Id.* at 101.

Beard argues: "If the act of sending a child across state lines is not enough to support personal jurisdiction in the receiving State, it is difficult to see—and the Court of Appeals did not explain—why the act of sending a prisoner across state lines should be any different." Pet. 16. This superficial analysis fails to withstand even cursory analytical scrutiny.

The factual circumstances in *Kulko* differ markedly from those in the present case. The First Circuit recognized that Hannon alleges that Beard's purposeful, voluntary conduct actually created significant contacts with Massachusetts: "when Beard arranged for the transfer between the Pennsylvania DOC and the Massachusetts DOC pursuant to an existing, ongoing contract between the two, he 'caused extensive services to be rendered

in Massachusetts, caused payment to be made in Massachusetts, and procured the application of Massachusetts law to [ ] Hannon's future conduct.'" Pet. 9a-10a. The First Circuit's analysis also explicitly outlined the significant benefits Beard allegedly obtained as a result of transferring Hannon pursuant to the ICC. Indeed, the First Circuit concluded that personal jurisdiction was permissible in part because Hannon's factual allegations assert that "Beard benefited . . . by ridding himself of a troublemaker." Pet. App. 17a. This is hardly analogous to the passive acquiescence at issue in *Kulko*.

In sum, the First Circuit's decision rests on the careful application of settled personal jurisdiction principles and is entirely consistent with this Court's binding precedent. Any difference between the conclusion reached by the First Circuit and those of other Courts of Appeals is attributable to the application of those settled principles to the particular facts of this case. This Court should not revisit that fact-specific inquiry. *See* Sup. Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.").

II. THIS COURT HAS REPEATEDLY AND RECENTLY DECLINED TO REVIEW THE JURISDICTIONAL ISSUE PRESENTED IN THIS CASE

This Court has repeatedly declined to review the issue of personal jurisdiction over out-of-state

public officials three times in the past three years, the most recent of which occurred last month:

- Question Presented in *Stroman Realty, Inc. v. Antt*, 528 F.3d 382 (5th Cir. 2008), *cert. denied*, --- S. Ct. --- (U.S. Oct. 20, 2008): "Whether the courts should apply a tort or 'doing business' analysis in determining whether a federal court's exercise of personal jurisdiction is proper when the claim is against a state official acting in his official capacity."

- Question Presented in *Stroman Realty, Inc. v. Wercinski*, 513 F.3d 476 (5th Cir. 2008), *cert. denied*, --- S. Ct. --- (U.S. Oct. 6, 2008): "Whether the same personal jurisdictional analysis should apply in a case against a non-resident public official as that applied in a case against a non-resident private litigant, or whether additional minimum contacts beyond those set forth in the state long-arm statute should be imposed where the defendant is a state official."

- Question Presented in *Grand River Enterprises Six Nations, Ltd. v. Pryor*, 425 F.3d 158 (2d Cir. 2005), *cert. denied*, 127 S. Ct. 379 (U.S. 2006): "Whether principles of due process and state sovereignty permit a court in one State to exercise personal jurisdiction over the Attorney General of another State in a suit brought to invalidate and enjoin

> enforcement of laws enacted and enforced entirely within the latter State."

The First Circuit's proper legal analysis, the unique, transfer-centric claims alleged in this case and the First Circuit's narrow, fact-driven holding offer no reason for this Court to conclude it ought to review the issue now.

III. PETITIONER ACKNOWLEDGES THAT THERE IS NO DIRECT CONFLICT AMONG THE COURTS OF APPEALS

A. The Courts Of Appeals Consistently Apply This Court's Personal Jurisdiction Legal Standard And Only Reach Different Results Due To Case-By-Case Analysis Of Relevant Facts

Beard unsuccessfully attempts to create a split in the Courts of Appeals where none exists. Indeed, Beard concedes in his petition that "canvassing appellate decisions involving jurisdiction over claims against out-of-state officials does not reveal a circuit split in the conventional sense." Pet. 16.

Despite this concession, Beard attempts to portray the First Circuit's decision as conflicting with decisions by the Seventh and Tenth Circuits in cases concerning personal jurisdiction over out-of-state corrections officials brought by transferred inmates. However, a careful reading of the cases Beard cites reveals that there are no differences among the circuits on matters of law. Rather, any difference in

the outcomes of those cases is attributable to the distinct factual circumstances of each case.

In his effort to create a conflict among the Courts of Appeals, Beard relies heavily on *Kinslow v. Pullara*, 538 F.3d 687 (7th Cir. 2008), and *Trujillo v. Williams*, 465 F.3d 1210 (10th Cir. 2006), but both the Seventh and Tenth Circuits stated and applied the identical personal jurisdiction standard as the First Circuit. *See Kinslow*, 538 F.3d at 690-93; *Trujillo*, 465 F.3d at 1217-23; Pet. App. 6a-21a.

First, contrary to Beard's contention, *Kinslow* only further demonstrates the absence of a split among the Courts of Appeals. In *Kinslow*, the defendant, a New Mexico inmate, was housed in Illinois pursuant to the ICC. 538 F.3d at 688-89. The inmate was subsequently transferred back to New Mexico from Illinois and suffered severe medical issues during the transfer. *Id.* The inmate filed suit in Illinois against, among others, New Mexico prison officials seeking redress for his inadequate medical care. *Id.* In conducting its analysis, the Seventh Circuit clearly stated the proper test for personal jurisdiction as articulated by this Court, but concluded that personal jurisdiction in Illinois was not proper as a result of the inmate's "failure throughout this litigation to look at each separate person's contacts with Illinois." *Id.* at 692-93. In short, *Kinslow* stated and applied the appropriate legal standard, but (here again) the absence of specific factual allegations as to each individual defendant prohibited an assertion of personal jurisdiction.

Beard erroneously asserts two reasons why he believes *Kinslow* "contrasts with the decision of the Court of Appeals": (1) *Kinslow* did not view the ICC between the two states as "an adequate predicate for finding that the named . . . defendants had the requisite contacts" and (2) the *Kinslow* court "refused to assume" that any of the defendants had sufficient contacts to support personal jurisdiction. Pet. 17 (emphasis omitted). The First Circuit in this case did not hold that the ICC, by itself, was an adequate predicate supporting an assertion of jurisdiction. The First Circuit also did not "assume" that Beard had sufficient contacts to support personal jurisdiction—it relied upon Hannon's specific, concrete, particularized factual allegations that Beard ordered Hannon's interstate transfer. Pet. App. 4a-5a.

Second, *Trujillo* likewise demonstrates the absence of a split among the Courts of Appeals and illustrates the narrow nature of the First Circuit's holding in this case. 465 F.3d at 1217-22. In *Trujillo*, the Tenth Circuit held that a New Mexico inmate transferred to Virginia pursuant to the ICC failed to allege sufficient facts to justify an assertion of jurisdiction over Virginia corrections officials in New Mexico. In conducting its analysis, the Tenth Circuit clearly stated the proper test for personal jurisdiction as articulated by this Court, but following a fact-specific inquiry concluded that personal jurisdiction in New Mexico was not proper because of the Virginia officials' passive *receipt* of the inmate and because "the only contacts . . . with New Mexico are that [the Virginia officials] received a transferred New Mexico prisoner and implemented New Mexico's

classification and work authorization policies pursuant to the ICC." *Id.* at 1219 (emphasis added).

Here again, Beard suggests the existence of a circuit split where none exists. Beard asserts that the Tenth Circuit (1) "differentiated between implementing an ICC transfer order and actually having sufficient contacts with a foreign state to justify the assertion of jurisdiction" and (2) was not "trouble[d]" by the "prospect of the prisoner having to proceed in two different forums." Pet. 17-18. The First Circuit in this case was not presented with a low-level defendant who merely "implement[ed]" an ICC order; the facts of this case involve specific allegations that the senior-most official in the Pennsylvania Department of Corrections personally directed his subordinates to transfer Hannon out of Pennsylvania and, consequently, purposefully created contacts with Massachusetts. Pet. App. 9a-10a. Those two factual settings are fundamentally different. The First Circuit also emphasized that this case had been pending in Massachusetts for a number of years (Trujillo's case was dismissed after only three months) and that Hannon was represented by court-appointed counsel in Massachusetts (Trujillo was proceeding *pro se* and did not have the benefit of appointed counsel). Pet. App. 20a; *Trujillo*, 465 F.3d at 1213. Those two factual settings are likewise fundamentally different.[9]

---

[9] In addition to further evincing the fact-dependent nature of the jurisdictional analysis, *Trujillo* also illustrates the First Circuit's narrow holding in this case. Unlike the transfer-related claims Hannon asserts in the present case, *Trujillo* involved a claim relating to the inmate's conditions of

In sum, despite Beard's assertion to the contrary, the First Circuit's decision in this case is in harmony with the decisions of other Courts of Appeals because all of those courts applied the same established legal standard to the disparate factual situations before those courts. It is the varying factual settings—not variations in the legal standard applied—that account for the different jurisdictional outcomes. *See Burger King*, 471 U.S. at 485-86 (explaining that there are no "talismanic jurisdictional formulas" and "'the facts of each case must [always] be weighed' in determining whether personal jurisdiction would comport with 'fair play and substantial justice'" (citing *Kulko*, 436 U.S. at 92 (1978))).

B. There Is No Inherent Conflict Among The Courts Of Appeals On The Broader Issue Of Personal Jurisdiction Over Out-Of-State Officials

Unable to identify a direct conflict among the Courts of Appeals, Beard and *amici* states attempt to conflate the narrow issue the First Circuit addressed (jurisdiction over an out-of-state corrections official where the inmate's claim directly relates to the inmate's transfer) with the significantly broader issue of personal jurisdiction over any out-of-state official. Pet. i, 18-21; Br. of *amici* states 15-17.

---

confinement in the receiving state—a category of claims expressly excluded from the First Circuit's holding. *See* Pet. App. 15a-16a (holding that "[t]his case turns on the unique factual situation wherein the harm alleged was directly tied to the contacts establishing personal jurisdiction").

The arguments on this broader issue were before this Court less than two months ago and was calendared for consideration at its September 29, 2008 conference. *Stroman Realty, Inc. v. Wercinski*, 513 F.3d 476 (5th Cir. 2008), *cert. denied*, --- S. Ct. --- (U.S. Oct. 6, 2008). At that time, this Court declined to review the issue of personal jurisdiction over out-of-state officials. *Id.*

The petitioners in *Wercinski* sought review, in part, on the question of whether "the same personal jurisdictional analysis should apply in a case against a non-resident public official as that applied in a case against a non-resident private litigant." Pet. i, *Wercinski*, (No. 07-1387) (U.S. May 5, 2008). Although the *Wercinski* petition similarly argued that there was a conflict among several Circuit Courts of Appeals, *see id.* at 11-21, the respondents in that matter likewise explained that any differences in those cases were attributable to *factual* differences, not any conflict in the applicable legal standard. Br. of Opp. 3-14, *Wercinski* (No. 07-1387) (U.S. July 7, 2008).

Hannon will not restate the arguments so recently considered by this Court.[10] Instead, Hannon

---

[10] The *Wercinski* petition analyzed several authorities Beard cites in his petition. *See Lee v. City of Los Angeles*, 250 F.3d 668 (9th Cir. 2001); *Kronisch v. United States*, 150 F.3d 112 (2d Cir. 1998); *Ziegler v. Indian River County*, 64 F.3d 470 (9th Cir. 1995); *United States v. Ferrara*, 54 F.3d 825 (D.C. Cir. 1995); *Mich. Coal. of Radioactive Material Users, Inc. v. Griepentrog*, 954 F.2d 1174 (6th Cir. 1992); *Taylor v. Phelan*, 912 F.2d 429 (10th Cir. 1990); *Great W. United Corp. v. Kidwell*, 577 F.2d 1256 (5th Cir. 1978); *Dial-Up Servs., Inc. v. Oregon*, No. 07-00423-PHX-EHC, 2007 WL 4200756 (D. Ariz. Nov. 27,

simply notes that the First Circuit applied the same legal standard as the Fifth Circuit in *Wercinski* in its consideration of state sovereignty interests: the common interest of the states standard mandated by this Court's binding precedent. *Asahi*, 480 U.S. at 113 (holding that a court must weigh "the shared interest of the several States"); *Wercinski*, 513 F.3d at 488 (weighing the "shared interest of the several states"); Pet. App. 20a (weighing the "interests of all sovereigns").[11]

2007); *Overby v. Johnson*, 418 F. Supp. 471 (E.D. Mich. 1976); *Maney v. Ratcliff*, 399 F. Supp. 760 (E.D. Wis. 1975).

In his petition, Beard relies on two additional cases that were not discussed in the *Wercinski* materials. First, in *City of Virginia Beach v. Roanoke River Basin Ass'n*, 776 F.2d 484, 487-89 (4th Cir. 1985), the Fourth Circuit explicitly denied jurisdiction based on the state's long-arm statute and did not engage in any constitutional due process analysis. This limited legal reasoning devoid of constitutional analysis could not have given rise to a conflict on the constitutional limits of personal jurisdiction over out-of-state officials. Second, in *Pennington Seed, Inc. v. Produce Exchange No. 299*, 457 F.3d 1334, 1343-44 (Fed. Cir. 2006), the Federal Circuit held that a Missouri court could not exercise personal jurisdiction over University of Arkansas officials because the operative complaint failed to allege sufficient contacts. The Federal Circuit stated that the complaint mentioned "Missouri" only once—and that single reference was in relation to a corporation that was no longer a party to the case. *Id.* at 1344 This basic pleading deficiency likewise could not be a course of conflict on the constitutional limits of personal jurisdiction over out-of-state officials. Accordingly, the legal analyses in both *Roanoke River Basin Ass'n* and *Pennington Seed* are of no help to Beard.

[11] The First Circuit's opinion is also entirely consistent with the Fifth Circuit's reasoning (and result) in *Wercinski*. Indeed, the First Circuit succinctly explained why Beard's reliance on Wercinski is inapposite:

Put simply, Beard and *amici* states offer no new evidence of a circuit conflict beyond the arguments advanced in the *Wercinski* petition, nor do they articulate a compelling new reason why the First Circuit's resolution of the significantly more circumscribed issue raised in the present matter warrants this Court's review.

IV. THE JURISDICTIONAL ISSUE PRESENTED IN THIS CASE IS NOT RIPE FOR THIS COURT'S REVIEW

A. The First Circuit's Limited, Fact-Specific Holding Does Not Alter Existing Precedent Restricting Most Suits Against Out-Of-State Corrections Officials

Beard's and *amici* states' contention that the First Circuit's opinion will open the floodgates to meritless inmate lawsuits is grossly speculative and significantly undermined by the empirical material *amici* states appended to their brief. Indeed, the information presented by the *amici* states reflects that in the past five years federal courts have handled only ten cases, including this case, involving

---

> [Wercinski] was filed in Texas and involved a challenge to an Arizona government official's endorsement of Arizona law in Arizona; the action attacked the validity of that law. By contrast, Hannon does not challenge the laws that permit a transfer, but rather alleges that Beard initiated the transfer in retaliation for and in order to hinder Hannon's exercise of constitutional rights.

Pet. App. 10a.

transferred inmates that sued out-of-state officials—an average of *two cases per year* out of the approximately 24,500 civil rights cases filed by inmates annually. Br. of *amici* states at Table A; Tracey Kyckelhahn & Thomas H. Cohen, Bureau of Justice Statistics, NCJ 222989, *Civil Rights Complaints in U.S. District Courts, 1990-2006* (2008), *available at* http://www.ojp.usdoj.gov/bjs/abstract/crcusdc06.htm.

Even within this discrete subset of cases, the First Circuit's holding will likely have a limited impact because of its explicitly narrow, transfer-related nature. Beard concedes in his petition (as he must) that the "Court of Appeals acknowledged concerns that its holding would subject prison officials across the country to lawsuits in every State that is a party to the ICC, but thought that its decision 'ought not have this [effect].'" Pet. 7. The First Circuit went to great lengths to emphasize that its holding does not apply to other claims from transferred inmates, such as those for pre- and post-transfer grievances:

> This case turns on the unique factual situation wherein the harm alleged was directly tied to the contacts establishing personal jurisdiction. It is not a free ticket for personal jurisdiction in receiving states over any prison officials who are parties to the Compact . . . . In short, our opinion gives no assistance for a transferred prisoner to assert a claim in the transferee court against the transferor [Pennsylvania officials] based on pre-transfer grievances.

Pet. App. 16a.

The First Circuit's opinion is far from a sweeping invitation for courts to routinely exercise jurisdiction over out-of-state officials. Hannon's claims arise out of Beard's alleged deliberate misconduct in using the ICC and its transfer procedures to silence or obstruct a "vexatious" prisoner's exercise of his constitutional rights. In furtherance of this unconstitutional activity, Beard purposefully and voluntarily created systemic, mutual and ongoing contacts with Massachusetts. It is precisely this "relatedness" of Hannon's claims to Beard's contacts that renders jurisdiction over Beard proper in Massachusetts for the transfer-related claims at issue in this case, while conversely negating the potential for expansive jurisdiction over prison officials in other cases for routine complaints related to general conditions of confinement or other alleged misconduct in the transferee forum. Accordingly, until there is real evidence of significant increases in claims against out-of-state prison officials from transferred inmates, review by this Court would appear to be imprudent and premature.

The First Circuit's opinion in this case is one of first impression on the precise issue of whether a court may exercise personal jurisdiction over an out-of-state corrections official where the inmate's claim arose out of and relates to the transfer itself. *See* Pet. App. 11a (recognizing that "Beard cites no case that suggests that prison officials cannot be subject to personal jurisdiction in a foreign state merely because they are state officials"). No direct circuit conflict has developed on this issue, and there is no reason to believe that other circuits faced with similar facts would not reach the same result. The

absence of considerable lower court precedent suggests that this issue may benefit from additional time and further percolation. *See Arizona v. Evans*, 514 U.S. 1, 23 n.1 (1995) (Ginsburg, J., dissenting) (recognizing that "when frontier legal problems are presented, periods of 'percolation' in, and diverse opinions from, state and federal appellate courts may yield a better informed and more enduring final pronouncement by this Court"). In sum, given that there is no direct conflict on a matter of law, it is prudent to permit the lower federal courts to "serve as laboratories in which the issue receives further study" prior to review in this Court. *See McCray v. New York*, 461 U.S. 961, 962-63 (1983).

B. The First Circuit's Narrow Holding Does Not Threaten To Disrupt Other Interstate Agreements As *Amici* Apprehend

Amici states attempt to inflate the importance of the First Circuit's narrow holding by arguing that this decision may encourage lawsuits involving other interstate compacts and business agreements. Br. of *amici* states 4-14. This argument is entirely speculative, and review on these grounds is premature.

The muted response to the Second Circuit's opinion three years ago in *Grand River Enterprises Six Nations, Ltd. v. Pryor*, 425 F.3d 158 (2d Cir. 2005), *cert. denied*, 127 S. Ct. 379 (U.S. 2006), demonstrates the limited reach of such a holding. In *Pryor*, the Second Circuit held that a New York court could exercise specific personal jurisdiction over 46

out-of-state officials who participated in meetings in New York to draft a nationwide tobacco settlement agreement. *Pryor*, F.3d at 165-68. Like the First Circuit in this case, the Second Circuit stated the long-established personal jurisdiction test and applied that standard to the specific facts before it. *Id.* at 167-68 ("It is a rare event for the representatives of various sovereign states to assemble purposefully in New York to attempt to jointly settle related lawsuits and to agree to then pass individual state statutes. But because that is what took place, New York is the proper forum for this lawsuit."). This Court declined to review *Pryor*, and since then no federal courts have expanded on *Pryor's* narrow holding to apply it to cases involving other interstate agreements.

In short, federal courts continue to apply established personal jurisdiction analyses notwithstanding the Second Circuit's decision in *Pryor* (and have not extended *Pryor's* reasoning beyond its fact-specific holding). There has been no dramatic shift in personal jurisdiction jurisprudence or a tidal wave of lawsuits over out-of-state officials based on *Pryor*. Consequently, there is no reason to expect that federal courts will read the First Circuit's narrow language in this case as an invitation to significantly broaden the personal jurisdiction analysis or the availability of personal jurisdiction over out-of-state officials.

CONCLUSION

For the reasons stated above, the petition for writ of certiorari should be denied.

Respectfully submitted,

MATTHEW J. MATULE
Counsel of Record
DAVID S. CLANCY
CHRISTOPHER G. CLARK
One Beacon Street
31st Floor
Boston, Massachusetts 02108
(617) 573-4800

Counsel for Respondent
Francis Hannon

Dated: November 7, 2008